Remarks

The status of the claims is as follows. Claims 1-14 were originally filed and were canceled in a Preliminary Amendment, in which Claims 15-42 were added. Claims 15-42 are subject to restriction. Claims 15-37 and 39-42 have been canceled herein, Claim 38 has been amended and Claims 43-50 have been added herein. Claims 43-50 ultimately depend from Claim 38.

The Amendment

Claim 38 was amended to remove methodology language and to indicate that the glass substrate comprises a plurality of spots where each spot comprises a different concentration of an immobilized oligonucleotide. Support therefor is in the specification, for example, page 4, lines 12-14.

Claims 43-50 were added.

Claims 43 is directed to the assay plate of claim 38 wherein the spots are dried spots on the substrate. Support therefor is in the specification, for example, page 5, lines 2-3 and 25-26.

Claim 44 is directed to the assay plate of claim 38, wherein the assay plate is in a waterproof storage container. Support therefor is in the specification, for example, page 4, lines 17-18.

Claim 45 is directed the assay plate of claim 38, wherein oligonucleotides at one or more spots have bound thereto a complementary molecule. Support therefor is in the specification, for example, page 5, lines 18-20.

Claim 46 is directed to the assay plate of claim 45, wherein the assay plate is dry. Support therefor is in the specification, for example, page 5, lines 25-27.

Claim 47 is directed to the assay plate of claim 45, wherein the complementary molecule comprises a label. Support therefor is in the specification, for example, page 5, lines 20-23.

Claim 48 is directed to the assay plate of claim 47, wherein the label is a fluorescent label. Support therefor is in the specification, for example, page 6, lines 6-8.

Claim 49 is directed to the assay plate of claim 38, wherein the oligonucleotides comprise DNA. Support therefor is in the specification, for example, page 5, lines 16-23.

Claim 50 is directed to the assay plate of claim 38, wherein the oligonucleotides comprise RNA. Support therefor is in the specification, for example, page 6, lines 12-15.

Restriction Requirement

The Examiner required restriction under 35 U.S.C. §121 as follows:

Group I – Claims 15-18.
Group II – Claims 19-23.
Group III – Claims 24-28.
Group IV – Claim 29.
Group V – Claim 30.
Group VI – Claims 31-32.
Group VII – Claims 33-37.
Group VIII – Claims 38-42.

Claims 15-37 have been canceled without prejudice to Applicant's filing of divisional applications.

In light of the cancellation of Claims 39-42 and the addition of Claims 43-50, which ultimately depend from Claim 38, Applicant submits that Claims 43-50 are part of Group VIII.

In the Restriction Requirement, a determination was made that the inventions of Groups I, II and III are distinct each from the other. According to M.P.E.P. 802.01 the term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (emphasis in original). Accordingly, in making the restriction requirement, the Office Action is acknowledging at least implicitly that the inventions of the aforementioned groups are separately patentable over one other. If this were not the case, then the restriction requirement would not be proper.

In response to the original restriction requirement as required therein, Applicant elects the invention of Group VIII, Claims 38 and 43-57.

Summary

Applicant has added new Claims 43-57 depending ultimately from Claim 38 and has proposed that these claims be added to Group VIII. Applicant, in response to the restriction requirement in the Office Action, has elected the subject matter of Group VIII.

Respectfully submitted,

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